

QIKJS-Part.II.E

Qualitative Inquiry of Korean Judicial System

Kiyoung Kim

Professor of Law and Public Policy

Dept. of Law, Chosun University

Gwangju South Korea

Theory

A theory is the system or structure of thought relating with the phenomenon, occurrences, issues or controversies that can possibly create an extent of belief system within the public minds or scholars. First, the persons staying with a private pleasure may not get onto this sophisticated or arcane domain. Second, a theory is highly relevant with the undergraduate education or classroom although it is used by the graduate educators somehow a different way and in implications. To say, a theory is the object that is utilized to support the research work, but with less than a unilateral discourse, and as submissive to the researcher.¹ In other words, the theory is not inviolable that differs from the discourse of undergraduate classroom, but can well be subject to a critique and amenable to the purpose of specific researcher. This implies that the graduate student will be soon-to-be companion on the area of interest. This also corroborates a class emphasis on the journal article critique as an important quality of scholarly research. Third, the theory is some type of epistemological mentality impressed or received by the researcher from the sea of world knowledge (Maxwell, 2005). Given the current practice of intelligence, the western dominance is undeniable leading me to some hint of historical insight.² We often

¹ I just mean a relative attitude, and we cannot deny the brilliant classes, such as Michael Sandel or Fukuyama, that the undergraduate students are enthusiastic to discuss the ideas or theories, and exchange a critical point of views with the eminent lecturers or speakers of public conferences. Also notable is that philosophers or scholars of greater impression, such as Thorough can be bred without the graduate education.

² It was touched thirty years ago that the Orientals were known by the westerners, uniquely and solely as intellectuals of Confucianism or Buddhism, which are actually two religions the Orientals revere. It is ironical that the religion for the Orientals would be some type of intelligence or scholarly attitude. It is more odd, at least for the Asians, that these are only their intellectual mentality within the perception of westerners. Although the westerners think themselves a Christian, they are disposed between the religious beliefs and the scholarly kinds of rationalism, democratic theory, structuralism, post-modernism, Republicanism and on. It was an encounter of mine thirty years ago that can improve gradually, but no significantly in my sense. Once it was caricatured by the Princeton University, as introducing the red wing journals and thoughts, so that the writers of Asian

know that a deductive thinking is the quality of quantitative researcher, and inductive approach is that of qualitative students. In the tradition of western intelligence, it is widely known that the first is vast for the continental ways of scholarly work and general trait of public minds while the second is for the British tradition.³ Nevertheless, it is interesting that the quantitative approach had been enabled by the scholars of Britain on the statistics and math in 19th centuries, and computerized recently as we learnt in the SPSS course. This characteristic simply implies (i) the researchers are a kind of methodologist, artist and creative mind a little different from general public minds (ii) the exchange of researchers are facile and more prominent to integrate their distinct community⁴

Forth, the context of different methods, therefore, are more distinct between two ways of approach than that of general people, in which the hypothesis deduced from a theory plays a crucial role for the quantitative studies while the role of theory is no such a landmark of distinction, but looms constantly to interact with the purpose and dealings of researcher that resolve the queries, say, what he likes to understand. Fifth, the researchers, who think about the use of theory, may be perplexed at first how they can identify the theories to which they have to be exposed for some level of succinct dealings with their research project. The theory is instantly felt that books are more probable to include. This initial feeling may not disappoint a researcher especially in the domain of humanity and social science. This assumption is particularly realistic if the successful theorist may wish to publish their lifetime work of articles in the book form. The theory also can be identified with reference to the prominent authors, for example, from the list

feminism surfaced with an increasing impression in the American arena of world intelligence. This could be a sign of gradual progress, perhaps, for those whom are interested in the Asians beyond two religions.

³ This does not mean that the American or British people are lively or sanguine and kinder with the chores from their neighbors and if the continental people are prone to be moral or orthodox, the kind of impression as “serenity of Beethoven”, in deep thought than magnificent sounds of Beetles. This also does not say that the British people might turn unkind than the past with the rise of American hegemony. I also do not mean if the British and US scholars had tested that of Levi Strauss or Heidegger, and the scholars of continent have to test a tack of quantitative pieces or theories from the Anglo-Saxon researchers. That might be implicated with the geobiology that the inland people, Europe, China, and Midwest of US may be more deductive than those of ocean front. More importantly, however, I mean that the theory would be versatile and illusive in concept meaning that the scholars eventually are destined to it, can politically mobilize the thought of public minds, as now felt with Sanders in the American presidential election, but also can be fragile with the political reality. It is also fragile for this class purpose and in the sense that the theory needs to be critiqued and may merely be a platform that the new research piece stands to argue their contribution for the scholarly journals.

⁴ This scholarly exchange can simply be affirmed with pages of Wikipedia dealing kindly with the thoughts, theories or philosophies of western tradition, for example, “influence” or “influenced.”

of most cited scholars in the field. The identification of theory is never any ordained way that one article can guide an insightful led for the purpose of specific researcher.⁵ Sixth, given a testing as the purpose within the quantitative studies, the creation of theory seems not immediate or anticipated by the quantitative researchers. However, it is not unusual that many most cited scholars are indulged in the quantitative method. This indicates that a persistent practice on this method may generate numerous articles as well as plenty of citations from their peers, which eventually allow him a fame of theorist in their known field.⁶ This is relevant that the researcher, in thinking about the role of theory, can be wise to consider his professional devotion in terms of methodology. Seventh, the theory can be omnipresent for skilled researchers as we go extreme if the simple two ways of contrast can be a theory between “high tier and low tier incomes” for recidivists and criminal policy of prevention. Also the theory is exterior in its existence, but advised to be interior, meaning a creative application of researcher with respect to his purpose (Hoover & Donovan, 2003). Particularly within my purpose, the role of theory is relevant to develop the conceptual framework on the studies of PAKJS. In this way, it is distinct in the qualitative research to rely on the conceptual map or other ways of precepts for its best practice. A memo on the concept map is useful to apply the theory through the stages of research operation, in which the system of concepts, assumptions, expectations, beliefs and theories supports and informs my research (Janesick, 2004; Maxwell, 2005). It works as if the importance of paradigm, a term by Kuhn, is frequently highlighted to reinforce the exploration and arguments by the scholars on public issue. The role of theory extends to guide the pilot or exploratory studies, which, I consider, would be more reliant on and affected by the theory. Since the major function of theory is to provide a model or map of why the world is the way it is, the theory is more tactful to allow the thought experiment and closely intertwined with experiential data, which should not be ignored because of the usual canons governing research (2005).

The Use of Theory in the Qualitative Method

The use of theory in qualitative studies can be demonstrated involving the conceptual framework, which is comparable or contrasted with the hypothesis to be tested in the quantitative studies (Kim, 2015a,b,c,d). Although the conceptual framework

⁵ For this reason, the public ranking of research impact includes a different purview among most cited books, most cited articles, most cited book authors, as well as most cited article authors in his lifetime. One article may excel the number of total citations of one’s lifetime research, implicating a relevance and importance of various impact rankings.

⁶ Their result and discussion within one article, if in rare cases than qualitative piece, may revolutionize the mainstream idea which impacts to make him successful.

within the various qualitative approaches can be particular in its extent or ways of use, it generally would be practiced across major types of approaches, such as case study, ethnography and GT approach. In view of my GT approach in combination with the hermeneutics and heuristics, it is fairly servicing the researcher's need on clarity and validity to facilitate the understanding of audience. A hypothesis or proposition also can be made, in which the aspect is not for the test as dissimilar to quantitative method, but to support the construction of meaning, interconnections or relationships of terms and concepts or themes, beliefs, theories and suggestions in the qualitative method.

Let me show a simple demonstration that deals with the days-ago appointment of high ranked KPO (Korean Prosecution Office) officers. The story was excerpted from the major newspaper article in Korea, which is related with my interest in a number of implications (Chosun News, 2015). First, the data source comes from a news media, which coincides with my research design. Second, it is really felt that the data analysis is tiring and reiterative process, in which the ideas and events or occurrences as well as corresponding need to analyze are constantly emerging to require a rigorous attention of researcher. Third, the content is crucially related with the aspect of input that characterizes the PAKJS in terms of political regionalism or nepotism. Forth, the thought and logical process may be indebted to the post-modern thinkers or Weberian concept of bureaucratic pathology on alienation and resilience, as well as its mazes as smacked. Therefore, I worked to comply with the concept of "bricolage" proposed by L. Strauss that everyday life stories are a creative basis for the qualitative researcher, and tried to be attentive of so-called paradigm as Kuhn highlighted, "...the entire constellation of beliefs, values, techniques, and so on shared by the members of given community (2006)." Under the guides, conceptual framework has been developed to analyze an input of high ranked KPO officers. The "researcher identity memo" can also be helpful that the researcher myself would be a member of Korean bar and decades of interested observer for the occurrences.

The news headline was captioned "The chief prosecutor officer of Seoul Central Prosecution Office (SCPO), a second man in KPO, has no regional background, TK (Chosun News, 2015)." It reported an appointment of 43 ranked officers, and subheadings also came in a short phrase and bold letters, "public surprise for the SCPO, and one year senior college alumnus to the chief prosecutor of KPO....born and educated in Seoul other than TK....Other prosecutors named X and Y were promoted for his case history of major public controversies....average age is 51.1, and no chief prosecutors from the PK background for the chief post of appellate prosecution offices (2015)." The main story of newspaper article gave some details on the appointed new faces, and occasionally used a satire term, such as "big four" or "massacre of lawyers with PK background." The reporter also kindly provided his short review of new profiles on the age and educational as well as regional

background. His use of terms are, in some sense, stereotyped as a usual ascription to the political stories, “a new release had not reshuffled the organization in any great scale, but seems a little extent in the plotline to prepare for the next congressional election several months afterwards (2015).”

The data gleaned from the article can be analyzed by using the conceptual framework as discursive above and also with the aid of critical realism or constructionism (Maxwell, 2005). The appointment practice can be viewed well to be historically patterned. A distinction can be newly refined as differs from the past and new administrations, which has been in power through eight years since 2007. MB. Lee and lady president had a regional background from TK, which became divergent from the earlier regional nepotism on *Yeongnam*. *Yeongnam* includes both TK and PK, which had long been a privileged group in the government posting of important offices. The regionalism has been charted also to embroil the Korean world of business that the local citizens had also been skeptic if major wealth or industries of nation had been grossly disproportionate between *Honam* and *Yeongnam*, two major contenders of Korean regionalism (Geertz, 1977). Therefore, the extent of regionalism is fairly notable as a matter of phenomenology with a dual consequence involved with the national capitals and Weberian concept of bureaucratic alienation. Nevertheless, it is very distinct in the practice of judicial posting that *Honam* continually surfaces to a considerable share, which gives hindsight that the judicial system is more susceptible of the discourse and analysis of such Bourdieu’s perspective on meta-capital or habitus and doxa (Geertz, 1985). It implies that the Weberian approach, a vast view on grand perspective encompassing the bureaucrats as a whole, perhaps comes less strong or needs to be particularized in the explication of personnel policies of judicial officers. However, the bureaucratic maze or pathology continues to be observed over history that often raises a public criticism for such nepotism. It is corroborating with a field data that the alienation may not be richly echoing relating with the regionalism from in-depth interviews or examination of public document. More important is the nepotism based on LLB graduates of so-called SKY universities, which, I consider, tends ascending than descending as the new law school system is socially accepted as one kind of habitus in the Korean community (Hart, 1999). In sum, the researcher found that the PAKJS involving a posting of ranked judicial or prosecution offices has been and expected to be influenced as showing (ii) the bureaucratic servitude on professional knowledge and familial sharing as the distinct cultural group (ii) tendency of political consideration or influence for anti-regionalism to assuage a public perception given the public concern and their important policy roles in the nation (iii) bureaucratic tradition and pathology can be identified as a factor involving alienation and mazes with an inertia, but less with regionalism, and more within the context of habitus, meta capital or knowledge economy if in the Anglo-Saxonian term, such as college background or yearly identifiers considered representing a professional

respect or career value (iv) the discourse on meta-capital can be applicable that retired ranked officers traditionally have many opportunities to earn a high income in short years thereafter, especially relating with socially resounding big criminal cases.⁷

- Sorry for a cursory presentation
- S : Seoul National University/K: Korea University/Y: Yonsei University/LLB means a bachelor in law
- SKY universities means the three universities considered most prestigious in Korea

Table

New Ranked Officers of KPO

Post		Name	Yearly Number of Judicial and Training Institute	Colleges	Regional Background
Ministry		Kim, A	16	S, LLB	Honam-1
Chief Prosecutor		Kim, B	16	S, LLB	TK
Vice chief		Kim, C	18	S, LLB	Seoul
Chief of Legal Affairs Academy		Lee, A	17	S, LLB	Honam-2
Vice Ministry		Park, A	19	K, LLB	Seoul
Ranked	Seoul Appellate	Mun, A	17	K, LLB	TK
	Pusan	Yoon, A	18	SN, LLB	Honam-1
	Daegu	Oh, A	19	S, LLB	CC
	Gwangju	Kim, D	18	S, LLB	KW
	Dae-jeon	Lee, B	19	S, LLB	TK
	Seoul Central District	Bong, A	18	S, LLB	Seoul
Chief of District		Kim, E	19	S, LLB	Seoul

⁷ The discourse on meta-capital might be fairer in this sense, when it relates with the private attorneys or licensing dispute with other adjacent professionals. For example, the licensing of patent attorneys for the normal attorneys without any systemic process of licensing review by the government is currently contended by the patent attorneys qualified based on the public exam. This kind of contention is not political, but questioned the professional qualification that coincides with the discourse of meta-capital.

			Kim, F	19	S, LLB	CC
			Kong, A	20	S, LLB	Honam-1
			Cho, A	19	S, LLB	TK
			Lee, A	19	K, LLB	CC
			Shin, A	20	K, LLB	CC
			Whang, A	20	S, LLB	KK
			Jeon, A	19	S, LLB	Seoul
			Kim, G	20	S, LLB	TK
			Ahn, A	20	Y, LLB	CC
			Han, A	20	S, LLB	TK
			Yoo, A	21	S, LLB	Seoul
			Chang, A	21	S, LLB	KW
			Song, A	21	K, LLB	Seoul
			Choi, A	21	Y, LLB	CC
			Lee, A	21	K, LLB	TK
Ministry of Justice	of	Chief of Planning and Coordination	Kwon, A	22	S. LLB	Seoul
		Chief of Legal Affairs				
			Kim, H	20	S, LLB	PK
			Ahn, A	20	S, LLB	PK
		Director of Prosecution Affairs				
		Director of	Lee, A	22	S, LLB	CC

	Criminal Policy					
	Head of Immigration and Aliens Affairs	Jin, A	21	K, LLB	Seoul	
Director of Planning and Coordination		Yoon, A	21	K, LLB	Honam-1	

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